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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,246	03/27/2001	Kirkland W. Vogt	5216	1581

7590 08/04/2004

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EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/818,246	Applicant(s) VOGT, KIRKLAND W.	
	Examiner Elizabeth M. Cole	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16, 17 and 19-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-17, 19-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>11/16/03</u>
<u>10/30/03</u> | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/30/03 has been entered.

1. Claims 1-14, 16-17, 19-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not describe that the waterborne, anionically-stabilized acrylic latex is destabilized under acidic conditions, said acrylic latex being adapted for assuming a non-emulsified state upon contact with acid”.

2. Claims 1-14, 16-17, 19-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not describe how to adapt the acrylic latex for assuming a non-emulsified state upon contact with acid and therefore do not enable one of skill in the art to make/use the invention.

3. Claims 1-14, 16-17, 19-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what is meant by the acrylic latex being adapted

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for assuming a non-emulsified state upon contact with acid. Is the structure of the acrylic latex changed and if so, how?

4. Claims 1-14, 16-17, 19-29 are rejected under 35 U.S.C. 13(a) as being unpatentable over Vogt et al, U.S. Patent No. 6,040,393 in view of Spek et al, U.S. Patent No. 4,886,702 substantially as set forth in the previous office action. With regard to limitation that the "acrylic latex is destabilized under acidic conditions, said acrylic latex being adapted for assuming a non-emulsified state upon contact with acid", since Spek teaches an acrylic latex which coagulates under acidic conditions, see col. 2, lines 48-55, it is the examiner's position that the latex polymers disclosed by Spek meet this limitation.

5. The Declaration under 37 CFR 1.132 filed 9/16/03 is insufficient to overcome the rejection of claims 1-14, 16-17, 19-29 based upon Vogt in view of Spek as set forth in the last Office action because: the showing set forth in the Declaration is not commensurate in scope with the claims since it is limited to a particular acrylic latex.

6. Applicant's arguments filed 10/30/03 have been fully considered but they are not persuasive. Applicant argues that the combination of Spek and Vogt does not render the claimed invention obvious because there is no express motivation to combine and because the invention is not obvious. With regard to the first argument, as set forth in the previous office action, where the equivalency is recognized in the art, an express suggestion of one component for another is not required for obviousness. With regard to the second argument, Applicant argues that the instant claims define a particular acrylic latex and that Spek teaches only acrylic latex generally. This argument is not persuasive because Spek teaches employing acrylic latexes which are suitable for use to form coagulated coatings on textiles from an impregnating bath and wherein

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the polymer lattices are dispersed in water by means of essentially anionic emulsifying system.

Spek teaches that quick coagulation occurs at a pH of less than 7. See col. 2, lines 1-50.

Therefore, Spek teaches an acrylic polymer latex, (i.e., emulsion) where the polymer latex coagulates under acid conditions, which equates to the limitation of assuming a non-emulsified state upon contact with acid.

7. Applicant argues that the claimed combination is not obvious because as shown in the Declaration early attempts to solve the problem failed. However, as set forth above, Spek teaches particular characteristics which are required in the polymer latex. Therefore, Spek does not teach employing any latex but those wherein the polymer latex will coagulate under acidic conditions.

8. With regard to the argument that Spek employs a blowing agent, Spek is relied on for the teaching of using particular polymer latexes as coatings for textile wherein the latex coagulates in an acidic environment. The fact that Spek employs a blowing agent does not negate this teaching. Similarly, with regard to the argument that the use of a blowing agent results in a non-uniform coating, it is noted that the claims do not specify any degree of uniformity for the coating and that, as set forth above, Spek is relied on for its teachings regarding the suitability of particular polymer latexes for forming coagulated coatings on textiles.

9. With regard to claims 28 and 29, see claims 3 and 4 or Vogt et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (703) 872-9306.


Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c